IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Chapter VIII Rule 32(2) (b)
Description of case.

Appeal from Order No. 517 of 2004

Date of decision :- 5th September, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date Initials of Judge

Note :- Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARNCHAL OF NAINITAL

Appeal from Order No. 517 of 2004

1. Smt. Munni Devi W/o Late Sri Ram Chandra Singh.
2. Bhupendra Singh minor S/o Late Sri Ram Chandra Singh.
3. Km. Guria minor D/o Late Sri Ram Chandra Singh.
4. Nikesh minor S/o Late Sri Ram Chandra Singh.
   All minors through their natural guardian and mother
   Smt. Munni Devi,
   All R/o Surjan Nagar, P.S. & Tehsil Thakurdwara,
   District Moradabad, U.P. …… Appellants

Versus

1. Sri Fool Kumar S/o Sri Vishnu,
   R/o Munirka, New Delhi,
   Presently at Court Road, Kanjari Sarai,
   Moradabad, U.P.,
   (registered Owner of Maruti Car
   No. DL-2CF-8928 26-8199).
2. New India Assurance Company Ltd.,
   Branch Station Road, Moradabad,
   Through Divisional Manager,
   Divisional Office,
   The New India Assurance Company Ltd.,
   Kumaun Plaza Hotel, Bazpur Road,
   Kashipur, District Udham Singh Nagar…… Respondents

Mr. B.S. Parihar, Advocate for the appellants.
None for respondent No. 1.
Mr. M.K. Goyal, Advocate for respondent No. 2.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUPTA, C.J. (Oral)

This is claimants' appeal for enhancement of the compensation awarded by Motor Accident Claims Tribunal / Addl. District Judge, Kashipur, District Udham Singh Nagar vide Award dated 06.05.2003 passed in Motor Accident Claim Petition No. 243 of 2002.

2. The claimants, who are unfortunate widow and minor children of deceased Ram Chandra Singh, claimed compensation of

Rs. 15,00,000/- for his death in the motor accident on 12.06.2002 when his cycle was dashed by the offending vehicle Maruti Car bearing registration No. DL-2CF-8928 resulting in multiple serious injuries to Ram Chandra Singh, who succumbed to those injuries on his way to the hospital. On the First Information Report about the accident, a criminal case was registered at Police Station Jaspur, District Udham Singh Nagar at Crime No. 29 of 2002 against the driver for the alleged commission of the offences punishable under Sections 279, 304-A and 427 of the I.P.C. The claimants pleaded that deceased Ram Chandra Singh, who was aged about 34 years, used to earn Rs. 3,000/- per month as Helper on the truck.

3. The owner and the insurer of the offending vehicle Maruti Car contested the claim and denied their liability to pay compensation to the claimants. The owner of the Maruti Car took the plea that as the vehicle was insured, the liability to pay compensation to the claimants was of the Insurance Company. The insurer, on the other hand, took the plea that the Claims Tribunal at Kashipur had no territorial jurisdiction to entertain the claimants' claim petition.

4. The claimants examined PW1 Smt. Munni Devi and PW2 Shantanu Kumar in support of their claim, whereas the owner and insurer of the offending vehicle Maruti Car did not examine any witness.

5. The Tribunal, on the evidence led by the claimants, held that deceased Ram Chandra Singh died on account of the injuries sustained by him in the motor accident; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Maruti Car; and the insurer of the offending vehicle Maruti car was liable to pay compensation to the claimants.

6. As the evidence led by the claimants about the income of the deceased at Rs. 3,000/- per month was not found reliable by the

Tribunal, the income of the deceased was assessed at Rs. 18,000/- per annum on its own estimate. By deducting 1/3rd of the above amount as the personal expenses of the deceased, the claimants' dependency was assessed at Rs. 12,000/- per annum. By multiplying the annual dependency of Rs. 12,000/- with the multiplier of '17', the compensation was worked out to Rs. 2,04,000/-. The Tribunal awarded further sums of Rs. 2,000/- towards Funeral Expenses; Rs. 5,000/- for Loss of Consortium to the widow; and Rs. 2,500/- for Loss of Estate. Thus, a total sum of Rs. 2,13,500/- was awarded as compensation to the claimants for the death of Ram Chandra Singh in the motor accident. The Tribunal, further, directed payment of interest on the above amount of the compensation at the rate of 8% per annum from the date of the claim petition.

7. Mr. B.S. Parihar, the learned counsel for the appellants submitted that the Tribunal has erred in assessing the income of the deceased at Rs. 18,000/- per annum only and in awarding low compensation of Rs. 2,13,500/-.

8. Mr. M.K. Goyal, the learned counsel for respondent No. 2 Insurance Company, on the other hand, supported the Award and submitted that the compensation of Rs. 2,13,500/- awarded by the Tribunal is just and proper compensation and does not call for any enhancement in this appeal.

9. The findings recorded by the Tribunal that deceased Ram Chandra Singh died on account of the injuries sustained by him in the accident: the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Maruti Car; and the insurer of the Maruti Car was liable to pay compensation to the claimants have, now, attained finality as the respondents have not filed any appeal against the Award.

10. The claimants pleaded that the income of the deceased Ram Chandra Singh was at Rs. 3,000/- per month, which he was getting as salary from the owner of the truck for his services as Helper. True, the claimants did not examine Rajendra Singh, the owner of the truck and the employer of the deceased, who could have proved the fact that an amount of Rs. 3,000/- per month was being paid to the deceased as salary. Nevertheless, the assessment of the income of the deceased by the Tribunal at Rs. 18,000/- per annum requires reconsideration. The notional income of Rs. 15,000/- per annum in the Second Schedule under Section 163-A of the Motor Vehicles Act was prescribed in the year 1994. The accident in the present case took place in 2002. If the depreciation in the purchase value of the rupee is taken into consideration, the notional income in the year 2002 would be about Rs. 30,000/- per annum. Even otherwise, in the year 2002, an unskilled labourer could have easily got Rs. 80/- per day. Thus, seen from any angle, the income of the deceased ought to have been assessed at Rs. 2,500/- per month and Rs. 30,000/- per annum. We, therefore, propose to re-compute the compensation taking the income of the deceased at Rs. 2,500/- per month and Rs. 30,000/- per annum.

11. By deducting 1/3rd of the income of the deceased of Rs. 30,000/- per annum, the claimants' dependency is assessed at Rs. 20,000/- per annum.

12. In a motor accident claim case, what is important is that the compensation to be awarded by the Tribunal / Court should be just and proper compensation in the facts and circumstances of the case. The Apex Court, in the case of **T.N. State Transport Corpn. Ltd. Vs. S. Rajapriya and others** reported in **(2005) 6 Supreme Court Cases 236,** observed in paras 8 to 10:

> "8. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many

> imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.
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> 9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.
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> 10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered."

13. Keeping the above dictum of the Apex Court in mind and considering the age of the deceased and the claimants, we are of the opinion that multiplier of '12' would be appropriate in the case.

14. By multiplying the annual dependency of Rs. 20,000/- with the multiplier of '12', the compensation works out to Rs. 2,40,000/-. The claimants are further entitled to receive Rs. 2,000/- towards Funeral Expenses; Rs. 5,000/- towards Loss of Consortium to the widow; and Rs. 2,500/- for Loss of Estate. Thus, the claimants, in all, are entitled to receive a total sum of Rs. 2,49,500/- as compensation for the death of Ram Chandra Singh in the motor accident.

15. For the forgoing reasons, the appeal filed by the appellants under Section 173 of the Motor Vehicles Act is allowed in part. The

compensation of Rs. 2,13,500/- awarded by the Tribunal is enhanced to Rs. 2,49,500/-. The enhanced amount of compensation shall carry interest at the rate of 6% per annum from the date of the claim petition.

16. No order as to costs.

(Rajesh Tandon, J.) 05.09.2006

(Rajeev Gupta, C. J.) 05.09.2006

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